

ENTERED

November 24, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOSE MANUEL PORTILLO-GUERRERO

§

Petitioner

§

VS.

§

UNITED STATES OF AMERICA

CIVIL ACTION NO. 1:19-CV-082

§

§

§

ORDER ADOPTING REPORT AND RECOMMENDATION

In May of 2019, Petitioner Jose Manuel Portillo-Guerrero filed a motion to vacate, set aside or correct his sentence, pursuant to 28 U.S.C. § 2255, alleging that his trial attorney provided ineffective assistance by counseling him not to appeal the Judgment in his initial case. (Doc. 1, 4) Portillo initially proceeded *pro se*, but was later appointed counsel.

The Government moved for dismissal, arguing that Portillo's motion was time-barred, or alternatively, that his cause of action was substantively defective because he did not allege that his attorney had disregarded an explicit instruction to file a notice of appeal. (Motion, Doc. 11, 2-4)

In October 2020, the United States Magistrate Judge issued a Report and Recommendation (Doc. 33) recommending that the Government's Motion to Dismiss be granted. No party filed objections.

As a result, the Court **ADOPTS** the Report and Recommendation (Doc. 33). It is:

ORDERED that the government's Motion to Dismiss (Doc. 11) is **GRANTED**; and

ORDERED that Petitioner Jose Manuel Portillo-Guerrero's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is **DISMISSED** as untimely filed, or alternatively, **DENIED** as unsupported by the record.

In addition, the Court finds that no outstanding issue would be debatable among jurists of reason, and that Portillo fails to make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Accordingly, the Court **DENIES** the request for a Certificate of

Appealability.

The Clerk of Court is directed to close this matter.

SIGNED this 24th day of November, 2020.



Fernando Rodriguez, Jr.
United States District Judge